United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

75-6051

JUL 17 1975

IN THE

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

B

DOCKET NO. 75-6051

REV. DONALD L. JACKSON

Plaintiff - Appellant,

vs.

UNITED STATES OF AMERICA & STATE OF NEW YORK

Defendants- Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

BRIEF ON BEHALF OF PLAINTIFF - APPELLANT,

REV. DONALD L. JACKSON
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BUFFALO, NEW YORK 14205

TO: Mr. John Elfvin
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QUESTION PRESENTED FOR REVIEW:

Appeal from Judge Curtin's decision page 3,

"The constitutional challenge to Art. 6 # 20 is insubstantial. 'There is no federal right to run for or hold state elective office."

"Further, the section is not constitutionally offensive because it does not involve a restriction upon access to the ballot. There is no support for the argument that there is a constitutional right to vote for a person not admitted to the bar as a judicial candidate."

" ....Plaintiff's request for injunctive relief with regard to Section 137 are denied. The constitutional claim is insubstantial."

"The plaintiff claims that the section is unconstitutional because it 'allows judges to file their nominating petitions in all recognized political parties, while nonlawyers are limited only to one party. 'Not every limitation or incidental burden on the exercise of voting rights is subject to a strigent standard of review."

"Section 137 does not contain an offensive scheme discriminating against one class of persons... ..."

"Plaintiff's motion for ... . preliminary injunctive relief are hereby denied."

To review these facts also, is State of New York defaulted by its failure to submit timely answer or to move against Petitioners complaint? That defendant United States of America, has not submitted any denial of any of the allegations and are in default.

That defendant United States of America, failure to make any denial of any or all of the allegation set forth in the complaint, this Court should grant the Summary Judgment. That defendant State of New York, failure to submit an answer or move against the complaint in the time allowed by the court is sufficient grounds to grant Summary Judgment .

The court held in Harper v. Kleindienst 362 F. Supp 742 (1973), "The Voting Rights Act, requires the United States Attorney General to perform an independent quasi-judicial function which he cannot relinquish. The United States Attorney General, has not made an investigation has not filed a denial, nor moved against the complaint.

STATEMENT OF THE CASE:

1. That Defendant State of New York defaulted and did not answer an time. That on April 19, 1974, Petitioner filed Motion for Summary Judgment. April 22, 1974, Defendant applied for Enlargement of time to asnwer or to move against the complaint, the Court extended New York States time to answer or to move against Petitioners complaint to May 15, 1974, Defendant New York State, failed to answer or to move against Petitoners complaint in the time granted by the Court.

2. That Defendant United States of America, has not answered or moved against Petitioners complaint.

3. That article # 7 of the Appeal-Index, list New York State's Motion to dismiss.

4. That article # 9, list N. Y. S. Memorandum .

5. That article # 12, list plaintiff Motion in opposition to Defendant N. Y. S.'s Motion.

6. That this lawsuit was originally filed in the United States District Court for the District of Columbia, on Motion by United States of America, the Court transferred this case to WesternDistrct Court for New York State.

7. That this lawsuit was filed under provisions of the Voting Rights Act of 1965, 42 USC Section 1981, 1983, 1982, and 1985, 42 USC 2000a et seq., Article III Section I,Article IV, Constitution of United States. Amendments IV, V, VI, VII, XIV, XV, XXII, and XXIV of United States Constitution, the 1964 Civil Rights Act, 28 USC 1343, 28 USC Section 2201, Titie 26 USC 170, 26 USC 611-613 and 301.7623 of United States Treasury Department Rule.

8. This action is brought by plaintiff on his own behalf and concerns the Right to Vote and Hold Office, equal employment opportunity, Equal protection of the laws, freedom from discrimination in the distribution of public moneys and quasi-public moneys, the right to vote and to hold a position in the Judicial Branch of Government, the right to collect wages earned, and various other issues related thereto.

9. That Article 6, Section 20 of the Constitution of the State of New York, i[illegible]n-constitut-[illegible]ional for it violates Article III Section I, of United States Constitution, it violates the Equal protection Clause of the 14th Amendment to United States Constitution and the Due Process Section of the 5th Amendment to United States Constitution, as well as the 1965 Voting Rights Act. Article III Section I, of United States Constitution list the only qualifications to be a Judge "Good Behavior". Article 6 Section 20 of New York State Constitution, violates the XXIV Amend. Section I, of United States Constitution, for its establishes a Poll Tax. See Exhibit "A".

10. That the State of New York taken away my rights guaranteed by the Federal Constitution to hold office and to vote in my Judicial Branch of Government, without Due Process of the law.

11. Jobs and educational opportunities have not been equal and are not presently equal. Blacks are the last hired and hired on low paying jobs, and the first out of work.

12. Article 6 Section 20, of the New York State Constitution, requires from a person that lives in the City to graduate from a recognized University, pass the Bar Examination, be admitted to the Bar, practice law for 5 years before being eligible to sit on the lower Courts of my Judicial Branch of Government, and to practice law 10 years before being eligible to sit on the higher courts of the State. This law discriminates

against Minorities, and also discriminates against Petitioner because Petitioner lives in the City instead of a town or village. People who live in towns or villages, can sit on their Judicial Branch of Government and need not to be a lawyer. Petitioner being Poor and Black, this law discriminates against the worst and this law established the most corrupt judicial system that can be found anywhere.

Political parties have the responsibility to nominate their candidate. Lawyers are required to pay to the party $10,000 to $30,000 for a Judgeship appointment or nomination. In many cases this money is paid by hoodlum clients they represent. These judges on the bench have a working agreement to go soft on them or their friends if they get into trouble. This is the reason that a well known hoodlum never goes to jail for a vicious crime. This judicial tie in to the underworld is the reason crime has increased. These hoodlums have increased their field of operation, children soon learn that their parents has control in the Courts and nothing will happen to them. The children organize gangs to assault, rob and murder, for they know they will go free if caught.

13. That Article 6 Section 20 of the New York State Constitution, establishes Educational discrimination. Should I obtain a Doctors Degree in Medicine or Education, I still would not be eligible to sit on my Judicial Branch of Government, because I did not have a law degree. The State of New York requires

persons living in Cities to have a law degree, be admitted to practice law for 5 year before being elgible to sit on your judicial branch of government, still the State nor the Federal Government provides no State or Federal Grant to obtain such education.

13. Since the Federal Constitution is silent regarding educational qualification for public office, States are barred from adding educational sequirements. States should be required to teach law to students commencing from the First Grade. The Defendants Governments have over the pass years done everything possible to keep the public ignorant on exist-laws. Laws are passed, the public never receives information about a law unless they violate a law. Buffalo, is located in Erie County, there is one law library , that has space available for about 50 people, when there is over million people in the County. Petitioner has requested various Federal agencies to give funds to establish law librarys in areas where there is a demand for the law. United States Government, O. E. O, and H. E. W., both refused.

14. The only qualificatiens found in United States Constitution to hold any elective office is Age, Citizenship for the Judicial Branch is "Good Behaviour."

The United States Supreme Court held in the case Williams vs. Rhodes 393 U. S. 23 (1968).

"Clearly, the Fifteenth and Nineteenth Amendments were intended to bar the Federal Government and the States from deying the right to vote on grounds of race and sex in presidential elections. And the Twenty - Fourth Amendment clearly and literally bars any State from imposing a POLL TAX on the right to vote 'for electors for President or Vice President'

Obviously we must reject the notion that Art. II # I, gives the States power to impose burdens on the right to vote, where such burdens are expressly prohibited in other constitutional provisions. We therefore hold that no State can pass a law regulating elections that violates the Fourteenth Amendment's command that 'No State shall... deny to any person... the equal protection of the laws."

... ...

"Invidious distinctions cannot be enacted without a violation of the Equal Protection Clause, ... In the present situation the State laws place burdens on two different, although overlapping, kinds of rights-the right of individuals to associate for the advancement of political belief, and the right of qualified voters regardless of their political persuasion, to cast their vote effectively. Both of these rights of course, rank among our most precious freedoms, We have repeatedly held that freedom of association is protected by the First Amendment. And of course this freedom protected against federal encroachment by the First Amendment is entitled under the Fourteenth Amendment to the same protection from infringement by the States. Similarly we have said with reference to the right to vote: 'No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined."

That Article 6 Section 20 of New York State Constitution deprives Petitioner equal voting rights and equal qualifications to hold public office. That the State of New York and United States Government forces Plaintiff to pay taxes which part of these funds goes to maintain the Judicial Branch of Government, while the same time depriving Plaintiff the right to be a candidate and hold office in the Judicial branch of Government, unless Petitioner:

(a). Attend a recognize University for 7 years, tuition in many Universities is more than $5,000 per year, paying a total of $35,000, which is illegal Poll Tax, to Vote and hold office.

(b). Pass the 3 day Bar Examination test. U.S. Federal Court has struck down many laws dealing with the right to vote never have they had to deal with a State law that required 3 days of testing to qualify to vote.

(c). Article 6 Section 20 of New York State Constitution, established wealth discrimination. Parents with wealth can afford to send their children to good Universities, Parents with wealth has influence to make sure their children pass the Bar Examination. This law discriminates against poor people.

The right to vote is a fundamental right preservative of other basic rights. Reynolds vs. Sims 377 U.S. 533, 562, (1964). A state statute that restricts the exercise of such a fundamental right is invalid under the Equal Protection Clause, unless it can be shown that the burden imposed is necessary to promote a compelling state intrest. Bullock vs. Carter 405 U.S. 134,

Justice Douglas Wrote: **in Lubin v Leonard Parish 42 L.W. 4435 March 1974.**

While I join the Court's opinion I wish to add a few words, since in my view this case is clearly controlled by prior decisions applying the Equal protection Clause to Wealth discrimination. Since classifications based on wealth are "traditionally disfavored," Harper v. Virginia Bd of Elections 383 U.S. 663, 668 (1966) the State's inability to show a compelling intrest in conditioning the right to run for office on payment of fees cannot stand Bulloch v. Carter 405 U. S. 134 (1972).

The Court first began looking closely at discrimination against the poor in the criminal area, in Griffin v. Illinois 351 U. S. 12 (1955), we found that de facto denial of appeal rights by an Illinois statute requiring purchase of a transcript denied equal protection to indigent defendants since there 'can be no equal justice where the kind of trial a man gets depends upon the amount of money he has" Id., at 19.
In Douglas vs. California 372 U. S. 353 (1963), we found that the State had drawn" an unconstitutional line ... between rich and poor" when it allowed an appellant court to decide an indigent's case on the merits although no counsel had been appointed to argue his case before the appellate court. Just recently we found that the state could not extend the prison term of an indigent for his failure to pay an assessed fine, since the length of confinement could not under the Equal Protection Clause be made to turn on one's ability to pay.

Williams vs. Illinois 399 U. S. 235 (1970): see Tate v. Short, 401 U. S. 395 (1971). But criminal procedure has not defined the boundaries within which wealth discrimination have been struck down. In Boddie v. Connecticut 401 U. S. 371 (1971) the majority found that the filing fee which denied the poor access to the courts for divorce was a denial of Due Process; Mr. Justice Brennan and I in concurrence preferred to rest the result on equal protection. And it was the Equal Protection Clause the majority relied on in Lindsey v. Normet 405 U. S. 56,73 (1972), in finding that Oregon's double bond requirement for appealing forcible entry and detainer actions discriminated against the poor "For them as a practical matter, appeal is foreclosed, no matter how meritorious their case may be."

Indeed, the Court has scrutinized wealth discrimination in a wide variety of areas. In Shapiro vs. Thompson, 394 U. S. 618 (1969), we found that deterring indigents frommigrating into the State was not a constitutionally permissible State objective. Closer to the case before us here was Turner vs. Fouche 396 U. S. 346,362, 364 (1970), in which the Court

found that Georgia could not constitutionally require ownership of land as a qualification for membership on the Board of Education, See Kramer vs. Union Free School Dist. 395 U. S. 621 (1969); Cipriano vs Houma 395 U.S 701 (1969). In Harper vs. Board of Election, Supra, we found a state poll tax violative of equal protection because of the burden it placed on the poor's exercise of the franchise. And in Bulloch v. Carter 405 U. S. 124 (1972) we invalidated a Texas filing fee system virtually indistinguisable from that present here.

What we do today thus involves no new principle, nor any novel application, "A man's property status, without more, cannot be used by a state to test, qualify, or limit his rights as a citizen of the United States. Edward v. CAlifornia 314 U. S. 160,184 (1941) (Justice Jackson, concuring). Voting is clearly a fundamental right. Harper vs. Virginia Bd of Elections, supra, at 667, Reynolds v. Sims 377 U.S. 533, 561, 562. But the right to vote would be empty if the State could arbitrarily deny the right to stand for election. California does not satisfy the Equal Protection Clause when it allows the poor to vote but effectively prevents them from voting for oneof their own economic class. Such an election would be a sham, and we have held that the State must show a compelling intrest before they can keep political minorities off the ballot. Williams vs Rhodes 393 U. S. 23,31 (1968). The poor may be treated no differently.

The Court held in Reynolds vs. Sims 377 U. S. 533,562 (1964),

The right to vote is a fundamental right preservative of other basis rights.

"A state statute that restricts the exercise of such a fundamental right is invalid under the Equal Protection Clause, unless it be shown that the burden, imposed is necessary to promote a compelling state intrest. Dunn, Supra; Bullock v. Carter, 405 U. S. 134,

The Court held in Educational Equality League v. Tate 472 F. 2d 612 (1973) (3) Under Fourteenth Amendment, all persons, colored or white stand equal before laws of States and Amendment contains necessary implications of positive immunity, or right, most valuable to colored race, of exemption from legal discrimination 42 U.S.C. 1983; U. S. C. A. Const. Amend. 14.

That the court held in Kusper, Vs. Pontikes, 42 L. W. 4003 (1973):

> "There can no longer be any doubt that freedom to associate with others for the common advancement of political beliefs and ideas is a form of 'orderly group activity' protected by the First and Fourteenth Amendments. NAACP v. Button 371 U.S. 415,430; Bates v. Little Rock, 361 U.S. 516, 522-523; NAACP v. Alabama, 357 U.S. 449,460-461. The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom. William v. Rhodes 393 U.S. 23,30. United States v. Robel 389 U.S. 25[illegible]. To be sure, administration of the electoral process is a matter that the Constitution largely entrusts to the States. But, in exercising their powers of supervision over elections and in setting qualifications for voters, the States may not infringe upon basic constitutional protections. Dunn v. Blumstein 405 U.S. 330; Kramer v Union School District, 395 U.S. 621; Carrington v. Rash, 380 U.S. 89. As the Court made clear in Williams v. Rhodes, supra, unduly restrictive state election laws may so impinge upon freedom of association as to run afoul of the First and Fourteenth Amendments 393 U.S. at 30"

That the court held in Lubin v. Panish Registrar Recorder, County of Los Angeles 42 L. W. 4435 (1974):

> "Historically, since the Progressive movement of the early 20th Century, there has been a steady trend toward limiting the size of the ballot in 'order to concentrate the attention of the electorate on the selection of a much smaller number of officials and so afford to the voters the opportunity of exercising more discrimination in their use of the franchise.' ... ... In sharp contrast to this fear of an unduly lengthy ballot is an increasing pressure for broader access to the ballot. Thus, while progressive thought in the first half of the of the century was concerned with restric[illegible] the

ballot to achieve voting rationality, recent decades brought an enlarged demand for an expansion of political opportunity. The Twenty-fifth Amendment, the Twenty-sixth Amendment, and the Voting Rights Act of 1965 42 U.S.C. 1973 (1970), reflect this shift in emphasis. There has also been a gradual enlargement of the Fourteenth Amendment's equal protection provisions in the area of voting rights:

"It has been established in recent years that the Equal Protection Clause confers the substantive right to participate on an equal basis with other qualified voters whenever the State has adopted an electral process for determining who will represent any segment of the State's population. See Reynolds v. Sims 377 U.S. 533 San Antonio School District v. Rodriguez 411 U.S. 1 (1973).

Green v. McElroy 360 U. S. at 492, "The right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the Liberty and Property concepts of the Fifth Amendment."

United States v. Manning 215 F. Supp 272 (1963)

(15) "States have the unquestioned right to fix the qualifications of voters, to regulate the registration of voters, and to conduct elections, but state laws and administration of state law are subject to federal constitutional standards established in the Fourteenth and Fifteenth Amendment, U.S.C.A. Const. art. I # 4: U.S.C.A. Const. Amends. 10, 14,15."

(18) "The Fourteenth and Fifteenth Amendments are enforceable by appropriate legislation and are not limited to elections for federal office . U.S.C.A Const. Amends. 14, 15."

(19) " The Fifteenth Amendment deals not only with denial of the right to vote but also with the registration of voters. US.C.A. Const. Amend. 15."

(25)" A suit under the Civil Rights Act of 1960 is a controversy between the United States and the named defendants and not between individuals who have been denied their voting rights and the defendants. 42 U.S.C.A 1971 (c).

The Court held in Yil We v. Hopkins 118 U.S. 356,370.

"At the root of the present controversy is the right to vote a "fundamental political right" that is "Preservative of all rights" The right of expression and assembly may be illusory if the to vote is undermined."

The Court held in Buckingham v. State ex rel. 35 A.2d 903,"The Legislature has no power to add to the Constitutional qualifications of voters."

The court held in Palagis v. Regan 126 P2d 818.

"Statute which impose additional qualification or desqualifications to those imposed by constitutional provisions relating to the right to vote and hold office are void."

The Court held in Graumen v. Jefferson County Fiscal Court 171 S. W. 2d 36.

"Constitutional provisions providing for "Free" and equal election is violated when the same opportunity for voting is not given to all persons entitled to the ballot, or when the right of franchise is restrained by Civil or Military Authority. All regulations of election franchise must be reasonable, uniform and impartial."

That the State of New York allows, the City of Buffalo, County of Erie. and the entire Statete deprive defendant a trial in the District or Neighborhood, because they authorize the election of

Judges at Large as well as the County, for two reasons to dilute the Black voting strength which results in no Blacks being elected other than one of the White desire to designate, the second is to make sure the ruling whites keep a dominate hand over the Blacks to jail any Black who dares to demand his equal rights, by making sure that Petitioner or any other Black man cannot obtain a fair and impartial trial in the District where the crime was committed.

Zimmer v. McKeithen 42 L. W. 2171 (CA-5) En-Banc 9/12/73 Reversing 41 L. W. 2099, "At-large elections in county, with history of racial discrimination, in which Blacks constitutes only 46 Percent of registered voters, though they comprise 59 percent of total population, unconstitutionally dilutes black voting strength."

To further give the ruling whites assurance of control Article # 6 Section 137 of the New York State Election Law, allows lawyers seeking a Judicial position on the ballot to file their nominating petitions in all recognized political parties, while non-lawyers can only file their nominating petitions in the political party they are a member of, the Court held in United Ossing Party vs. Hayduk 357 f. Supp 962 (1972)

> "Voting Act provisions that if State covered by Act enacts any prerequisite to voting, or standard, practice or procedure with respect to voting different from that in force on November 1, 1968, such law is inoperative, as potentially discriminatory, until it has been approved as required by such provision must be given broadest possible scope to reach any state enantment which alters election law of a covered state in even a minor way. Voting Rights Act of 1965, 5 as amend 42 U.S.C.A 1973."

The common law has been abandoned many years, however to punish anyone that does not go along with the power structure. The State of New York allows the City of Buffalo to pass Ordinances; to deprive defendants charged with an offense or crime the right to a jury trial.

The State of New York with the knowledge of United States Department of Justice, because I submitted an affidavit to the Justice Department complaining of Defendants State of New York election procedure and how they used the laws in these cases to get their enimies and to limit Freedom of Speech. The City of Buffalo Housing Ordinance, gives the Court the

right to fine a person up to $1,000 with limit of 15 days in jail. The defendant is barred by law from demanding a jury trial.
A defendant owning a building that cost $500,000 to tear down or $100,000 to fix up, they will be Summons to the Housing Court on a criminal chargefor failure to fix up their property many persons owning a house living on fix income does not have the money to make repairs, still they will be told they are guilty and will fine them $1,000 and frequently sentence them to 30 to 75 days in jail, plusorder the defendants to tear down their buidding, and if the City goes upon private property and gives the contract to one of their contracting friends, that kicks back to City hall $300. to $500 under the table for the contract the Court will order the defendant to demolite the building even if the cost is $500,000 or will order the defendant to go to City Hall and arrange for payment of tearing down the building. This case is a combination of criminal and civil. The city is using criminal action to collect a civil bill. Petitioner would be entitled to a Jury Trial under provision of the 6th Amendment and under provisions of the 7th Amendment to United States Constitution. See Knoll v. Davidson 42 L. W. 2091 (Sup Ct.) Aug 15, 1974.
See People v. Jones 42 L. W. 2003 6/5/73, "Sixth Amendment bars trial of state defendant by jury drawn from judicial district that excludes judicial district in which crime was committed."

See William v. Florida 399 U. S. 78. See Duncan vs. Louisiana 391 U. S. 145, both cases cover the vicinage and right to a jury trial.

Defendant approved the actions of the City of Buffalo, by continual supplying State and Federal funds to the City. The City passed City Ordinance Chapter XII Section 19.

> RIGHT TO ENTER BUILDING
> THE COMMISSIONER OF PUBLIC WORK OR THE DIRECTOR OF BUILDINGS OR ANY EMPLOYEE OF THE CITY DULY AUTHORIZED BY EITHER OF THEM MAY ENTER ANY PREMISES IN THE CITY OF BUFFALO FOR THE PURPOSE OF EXAMING ITS CONDITION.

I have been very vocal against corruption in City Government, I want to cite a case, but before I do I want to say, if a person fails to pay their Gas or Electric Bill the utilities company can cut off their services, In the City of Buffalo, water bill is a tax and a lien on the property. The City must have a Court Order to cut off water, however the City of Buffalo goes upon private property without any Court Order and cuts off the water for non-payment, and frequently they break of the cut off stem which is in the property owners yard, then the City will dispatch the health inspector, to the property owners home give him a summons to appear in Court, and will be fined for not fixingt the cut off value that the City broke. This valve must be dug up and the job will cost between $400. and $500.

Additional reason that preliminary injunctive relief and Summary Judgment should be granted. To keep control of the Judicial Branch of Government in the hands of a select few, and to further the conspiracy to deprive Petitioner his Civil Rights and Equal protection of the law and to use the law to punish anyone that disagrees with the power structure.
Judges are elected at Large-with no resident requirement.
Petitioner charged with a crime cannot obtain a trial in the District or vicinage.
The Court held : Rice v. Sims, S. C. 3 Hill 5,7,
"Vicinage." within the rule the jury is to come from the vicinage, means district."

The court held in : Ex Parte McNeeley, 14 S. E. 436, 36 W. Va. 84, 90, 32 AM St. Rep. 831, 15 L.R.A. 226
"The word 'vicinage' is defined as meaning neighborhood or vicinity, and does not mean County."

The Court held in Baxter v. Commonwealth, 166 S. W. 2d 24,28, 292 Ky. 204.
"The rule at common law that a jury must come from the 'vicinage' was developed and adhered to so that an accused could be tried in his own neighborhood to allow him the advantage of his good character and standing in his vicinage to be tried by the jurors who knew him."

The City of Buffalo has 9 Councilman Districts. A Councilman is elected in each District, that the Councilman must live in his District, the County has 20 Legislative District, each Legislator must live in his District. All Judges are elected at large with no resident requirements in the City and County.

The Court held in Reese v. Dallas 43 L.W. 2285 (CA-5) en Banc 12/30/74:
"County system that provides for election of all four of its County Commissioners at large, but that requires one Commissioner to reside in each of Four unequally populated District, violates Fourteenth Amendment."

The Court in Davis v. Thomas County 380 F. 2d 93 (1967) "Upheld at-large election plan with a district residency requirement...."

See Heller, supra, n.25, at 31-33,93; Warren, New Light on the History of the Federal Judiciary Act of 1789, 37 Har. L. Rev. 49, 105 (1923). Technically, vicinage, mean neighborhood, and "vicinage of the jury, meant jury of of the neighborhood or in medieval England, jury of the County.

Domestic Relations Court of City of New York held in In Re Cotton 30 N.Y.S 2d 421

(4) "A person charged with an offense must be tried within the limits of the local where the offense was committed, in the county, borough, city or state, so that he may be tried by his peers within the boundaries where the offense was committed."

The Court held in Gordon v. Justice Calif, Supt Ct. 43 L.W. 2089 (8/14/74).

We do not abolish the existing system permitting the use of non-atterney judges in all matters within the justice court jurisdiction. Such judges may continue to function, in civil cases, and in criminal cases not involving potential jail sentences. Moreover, even in criminal cases where a jail sentence may be imposed, the non-atterney judge may act so long as defendant or his counsel waives the due process right to have the proceedings presided over by an atterney judge.

The City of Buffalo Ordinance XII Section 19, that states, Director Building or the Commissioner of Public Work, may authorize any city employee to enter my home without a warrant or my permission is illegal, the court held in (U. S. Supreme Court) Camera v. Municipal Court 387 U.S. 523 and See v. Seattle 387 U. S. 541, "That City and Health Inspectors must have search warrants to enter homes and buildings."

Turner vs. Fouche 396 U. S. 346 (1970), Jones vs. Mayer Co. 392 U. S. 409 (1968).

8. That in 1971, 14,900 Tax Exempt Foundation exempt under 501 (c) (3) of the I. R. C., were contacted by Petitioner asking that I be employed as a Director or Trustee, funds to invest in minority business, during 1972 and 1973, 6,122 additional foundations or Trust were contacted asking for employment as Director or Trustee and funds for investment in minority business, I was rejected by 99% for the sole reason that I was Black. I found that 95% of the foundations has never had a Black employee in its history, while 45% didn't distribute their income from their investments as required by law, 70% were controlled by the family or corporation that donated the funds. 90% of the foundations have never given a grant to a Black organization, I found only 1% foundations that has invested in minority businesses. I further found less than 1% of foundations annual funds donated goes to Blacks.
United States Internal Revenue Service, Secretary of U. S. Treasury and President Richard M. Nixon, were so notified that United States I. R. S, were giving Tax Exemption Status to foundations and Trust who were practicing racial discrimination. I further asked that these foundations Tax Exemption be revoked or punished, collecting taxes from them since they were discriminating, they would not be entitled to a Tax Exemption status while they were violating Federal law, and I be paid 10% of the amount collected as authorized by 301.7623 of U. S. Treasury Department Rules. The Internal Revenue Service, subritted me the Reward Forms, for me to sign for payment of the 10% reward. There is more than $ 70 Billion in foundations and trust hands. If United States Government had enforced the law, it would have collected from foundations discriminating and other penalties over $30 Billion. Petitioners reward or wages would been over $3 Billion. My survey further indicated 85% of the foundations gave millions of dollars to Hospitals. See Eastern Kentucky Welfare Rights Organization vs. Shultz 42 L. W. 2361.12/20/73.

> " Internal Revenue Service Rev. Rul. 69-545, allowing private nonprofit hospitals to qualify as 'charitable' institutions without requiring them to provide service free or at reduce rate to indigents, represents sweeping policy change that is inconsistent with Congressional intent and is therefore, invalid."

The Tax Reform Act requires 100% penalty for illegal grants. 3077 and 1.503, 3078 of the Tax Reform Act, Denial Exemption for prohibited transactions, members of the family 3078.03 (5) Section 101 of the Act requires 100% penalty.

See Gonzales vs. Fairfax Brewster, Inc 42 L. W. 2077, 7/27/73,

" Private schools policy of refusing to admit blacks solely because of their race violates Civil Rights Act of 1866, 42 U. S. C. 1981, since it denies blacks same right to 'to make and enforce contracts *** as is enjoyed by white citizens."

See Green vs. Kennedy 309 F. Supp 1127 (1970)

(12) " Fifth Amendment due process clause did not permit federal government to act in aid of private racial discrimination in way which would be prohibited to States by Fourteenth Amendment, whether or not it was purpose of federal statute or regulations to foster segegated schools. Civil Rights Act of 1964, #601, 42 U. S. C. A. 2000d U. S.C.A. Const. Amend 5, 14."

See Huey vs. Barloga 277 F. Supp 864 (1967).

(7) Neglect by State officials of their duty to take reasonalbe measures to protect oppressed from intimidation and violence used against them as part of a system of discrimination is, where officials have knowledge ofuse of force by one class of persons against another, tantamount to discrimination by State officials themselves and their neglect thus is "State Action" and is within ambit of Civil Rights Act 42 US.C.A 1985 (3) U. S. C. A. Const. Amend 14.

(25) The Civil Rights Act is directed at the maladministration, neglect and disregard of laws by state and local officials, and has purpose of providing a federal remedy for deprivation of federally guaranteed rights 42 U.S.C.A #1983, 1985.

See Educational Equality League vs. Tate 472 F. 2d 612.

(6) Affirmations of good faith in making individual selections are insufficient to dispel prima facie case of systematic exclusion of Negroes 42 U. S. C. A. 1983.

See Rev. Jackson vs. Statler Foundation **496 F. 2d 623 (CA-2)** 4/5/74

Tax-exemption of privste charitable foundation charged with iiscriminatory denial of grant may confer "STATE ACTION" status sufficient to invoke Equal Protection Clause of 14th Amend, and Due Process Clause of Fifth.

See: Bittker and Kaufman, Taxes and Civil Rights, Constitutionalizing, The Internal Revenue Code, 82 Yale L. J 51, (1972).

King vs. Laborers 443 F. 2d 273.

McGlotten vs. Connally 338 F. Supp 448 (1972) (4)

"A black American has standing to challenge a system of support and encourgement of segregated fraternal organization."

(11). The internal Revenue Code does not allow deductions of contributions to organizations which exclude nonwhites from membership 26 U.S.C. (I.R.C 1954) #170 (c) (4) 501 (c) (8) 642 (c) 2055, 2106 (a) 2533; U.S.C.A Const Amend. 1, 14."

That all of the foundations examined were Tax Exempt under 501 C (3) of the I. R. C.
That 100% of the foundations never conducted an election as required by law, Each of the foundations excluded Petitioner from being a candidate, ~~et~~ to make nominations or to vote because Petitioner is poor and black. Foundations illegal policy has created a Class for professional and wealthy white people.

See Kapper v. Pontikes 42 L. W. 4003 (1973), Scheuer 42 L.W. ~~$%~~ 4543 (1974).
Shelly vs. Kramer 334 U.S 1, Whatley vs Clark 482 F. 2d 1230,

" A state statute that restrict the exercise of right to vote is invalid under the equal protection clause, unless it can be shown that the burden imposed is necessary to promote a compelling state intrest U. S. C. Const Amend 14."

See Yanito vs. Barber 348 F. Supp 587 (1972)

Jennings vs. Davis 476 F. 2d 1271 (1973) Generally, liability for negigence arises only from affirmative action but where one has an affirmative duty to act and he fails to act accordingly, he may be held liable for his nonfeasance if his omission is unreasonable under circumstances.

42 U.S.C. 1973.

See JONES vs. Mayer Co. 392 U. S. 409 (1968)
Harper vs. Kleindienst 362 F. Supp 742
Brandenburg vs. Ohio 395 U. S. 444, NAACP vs. Button 371 U.S 415, Scales vs. U.S. 367 U. S. 203 (1961) , Wasberry vs

Sanders 376 U.S. 17 (1964). Poindexter vs. La. Education Comm'a for Needy Children 258 F. Supp 158 (1968). Falkenstein v. Dept. of Revenue 350 F. Supp 887, Terry v. Adams 345 U.S. 461, Bob Jones University v. Connally 341 F. Supp 277, Pennsylvania v. Board of Trustee 353 U.S 230 (1957), Norwood v. Harrison 413 U.S. 455 (1973), Pitts Dept. of Revenue 333 F. Supp 662 (1971). Bright v. Isenbarger 314 F. Supp 1382 (1970). Shakeman v. Democratic Organization 435 F. 2d 267.

The Commissioner of Internal Revenue Service, was notified, on November 24, 1971, that these foundations were practicing racial discrimination, I did not receive a response until after several other notices were sent, then over a year later I received a letter signed by S. B. Wolfe, Director, Audit Division of the Internal Revenue Service, stating that the Internal Revenue Service had no authority to eliminate racial discrimination, referring to employment, giving grants by organizations they give Tax Exemption Status to.

The Court held in Freedman v. Maryland 380 U.S. 51 (1965), 93 L. W. 4211 and several cases that follow it. In Freedman, the Court invalidated provisions of Maryland censorship regulations which required submission of films to a board of censors unrestricted by limits of time on the censors' deliberation. The teaching of Freedman and the cases that followed it in that an application for a for a license or a permit to a public body resolved promptly, and such resolution be made known to the applicant. Such requirements are a dictate of due process, The Chicago Park District officials "failed to fullfill that duty and erred constitutionally by so doing. Sixteen days passed between the submission of an applicat· for a permit and a response from Chicago Park District officials. The reasons for the delay, whatever they were, cannot justify the tardy response on any view of the facts." "Sixteen days passed between the submission of an applicatiam for a permit and a response "

That United States Government gives Oil Firms Depletion allowance of 22% in some cases this amount to over $3 billion, the Court held in the case Burton v. Wilmington 365 U.S. 715:

"When federal funds are mingles with private funds the Government becomes a joint participant, in the operation of the Business, and must obey the Equal Protection Clause of the 14th Amendment to U. S. Constitution."

The Court held in Paragon Jewel Coal Co v. 380 U. S. 624, "The purpose of depletion allowance for Federal Income Tax Purpose is to compsenate owner of wasting mineral assets for part exhausted in production, so that when minerals are done, owners's capital and capital capital assets remain unimpaired."

Petitioner ask this Court to grant damages as indicated as follows:

" AWARDING TO PLAINTIFF, PURSUANT TO THE PROVISIONS OF U. S. Constitution MONEY DAMAGES AGAINST DEFENDANT UNITED STATES OF AMERICA FOR NOT PROVIDING PETITIONER EQUAL VOTING RIGHTS, AFTER BEING NOTIFIED THAT NEW YORK STATE WAS VIOLATING THE UNITED STATES CONSTITUTION, MONEY DAMAGES FOR LOSS IN WAGES FOR NOT BEING ABLE TO VOTE AND HOLD POSITION IN THE JUDICIAL BRANCH OF GOVERNMENT $1,250,000. AND PUNITIVE DAMAGES $6,000,000.

AWARDING TO PLAINTIFF, PURSUANT TO THE PROVISIONS OF 42 USC 1983, MONEY DAMAGES AGAINST DEFENDANT NEW YORK STATE $1,200,000 AND PUNITIVE DAMAGES $8,000,000.

AWARDING TO PLAINTIFF, PURSUANT TO THE PROVISIONS OF 42 USC 1983, MONEY DAMAGES AND U.S CONSTITUTIONAL PROVISION FOR FAILURE IN UNITED STATES OF AMERICA, AGENT,

servants and employees enforcing, THE EXISTING U. S. CONSTITUTIONAL PROVISIONS AND LAWS OF UNITED STATES, WHICH AMOUNTS TO UNITED STATES GOVERNMENT PAYING THESE TAX EXEMPT FOUNDATIONS TO DISCRIMINATE AGAINST PLAINTIFF WAGES IN THE AMOUNT OF 10%, WHICH THE INTERNAL REVENUE WOULD HAVE COLLECTED IF ENFORCED RACIAL DISCRIMINATIONIN THE AMOUNT OF $3 BILLION AND PUNITIVE DAMAGES IN THE AMOUNT OF $10 BILLION.

AWARDING TO PLAINTIFF, PURSUANT TO THE PROVISIONS OF 42 USC 1983, MONEY DAMAGES, FOR GIVING TAX EXEMPT FOUNDATION STATE ASSISTANCE IN THE WAY OF TAX EXEMPTION TO DISCRIMINATE AGAINST PETITIONER IN THE AMOUNT OF $1,000,000, AGAINST STATE OF NEW YORK, AND PUNITIVE DAMAGE IN THE AMOUNT OF $5,000,000.

AWARDING TO PLAINTIFF, PURSUANT TO THE PROVISIONS OF U.S. CONSTITUTION MONEY DAMAGES, AGAINST UNITED STATES OF AMERICA, FOR BECOMING PARTNER WITH OIL FIRMS, BY MINGLING PUBLIC FUNDS WITH PRIVATE FUNDS, BY GIVING DEPLETION ALLOWANCE TO PRIVATE OIL FIRMS, AND THEN ALLOWING THESE FIRMS TO BID AGAINST A POOR BLACK MAN, THAT UNITED STATES GOVERNMENT GIVES NOTHING, WHICH AMOUNTS TO UNITED STATES GOVERNMENT GIVING AWAY VALUABLE LANDS TO RICH OIL FIRMS AND DISCRIMINATING AGAINST PETITIONER, MONEY DAMAGES $25,000,000, AND PUNITIVE

DAMAGES $150,000,000.

AN AWARD OF MONEY DAMAGES TO THE PLAINTIFF PURSUANT TO U.S. CONSTITUTION AGAINST BOTH DEFENDANTS IN THE AMOUNT OF $45,000,000 and FOR PUNITIVE DAMAGES OF $25,000,000.

TOTAL Voting Right damages against U.S.A. $7,250,000

Total Voting Rights Damages against N. Y.S. $9,200,000

Total damages against U. S..A. $13,252,250,000.

Total damages against N. Y. S. $85,200,000

Total $13,337,450,000

CONCLUSION:

That the court has jurisdiction not only to consider the election of Judge, but the entire lawsuit. Defendant United States of America, applied to the Court for Enlargement of time to answer. 90 days was granted. The 90 days was up in July 1974. United States of America did not file an answer and is in default. United States of America, did file an affadivate in-opposition for three-judge-court, and the District Court considered their argument against injunction. The Court has made a complete ruling by remaing silent in making its Order and Decision of March 28, 1975. This decision gives the Court of Appeals jurisdiction to rule on the entire lawsuit.

Petitioner has clearly shown, that New York State

Election Laws are not equal. If you live in town or village, you can sit on the Judicial Branch of Government and need not be a lawyer. if you live in the City, you must graduate from a recognize law school, pass 3 day bar examination, be admitted to practice law, and practice law for 5 years before being elgible to sit on judicial branch of Government.

Lawyers seeking a judicial position on the ballot, are allowed to file their nominating petitions in all recognized political parties and to be a candidate in each political party primary election, while non-lawyers may only file their nominating petitions in the one party they are a member of and can only vote in the one party, in a primary election, while lawyers name appears on each political party ballot.

When one is discriminated against his Blood Pressure increases to a dangerous point that effects the kidneys, and results in shortening the life span. How much is one day of life worth, two days, week, month, year? Discrimination also deprives a person from enjoying life as White people. Can we purchase one day of life for $13 billion or $50 billion, or what price can a life be brought for? The amount of damages requested is reasonable, plus loss in wages and loss in income from the loss in wages. That unless this Court moves with a sledge hammer against United States of America and the State of

New York, racial discrimination will contimual to exist. Article 6 Section 20 and Article 6 Section 137 must be declared un-constitutional, and all Judges elected in this State that has rendered a Judgment against Petitioner that the Judgment be declared null and void, and that the Judges elections be declared null and void. Order all Judicial positions be up for re-election, or appointment that if appointments are made that one half of the Judges appointed be non-lawyers and live in a political district and to bar all present siting judge in the State Court name from being placed on the ballot the first year, this will make all candidates seeking election on an equal basis.

June 20, 1975 Respectfully submitted,

Rev. Donald L. Jackson

Rev. Donald L. Jackson

NEW YORK CONSTITUTION, ART. VI, § 20.

[Judges and justices; qualifications; eligibility for other office or service; restrictions.] § 20. a. No person, other than one who holds such office at the effective date of this article, may assume the office of judge of the court of appeals, justice of the supreme court, or judge of the court of claims unless he has been admitted to practice law in this state at least ten years. No person, other than one who holds such office at the effective date of this article, may assume the office of judge of the county court, surrogate's court, family court, a court for the city of New York established pursuant to section fifteen of this article, district court or city court outside the city of New York unless he has been admitted to practice law in this state at least five years or such greater number of years as the legislature may determine.

EXHIBIT "A"